

WHITE MOUNTAIN APACHE TRIBE,	:	Order Referring Case for Evidentiary
d/b/a FORT APACHE TIMBER CO.,	:	Hearing
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 85-30-A
DEPUTY ASSISTANT SECRETARY--	:	
INDIAN AFFAIRS (OPERATIONS),	:	
Appellee	:	February 26, 1986

On April 8, 1985, the Board of Indian Appeals (Board) received a notice of appeal from the White Mountain Apache Tribe, d/b/a Fort Apache Timber Co. (FATCO). FATCO sought review of a January 31, 1985 decision of the Deputy Assistant Secretary--Indian Affairs (Operations) (appellee) concerning the disapproval of Tribal Resolution No. 84-19, which established interim stumpage price ratios for FATCO for January 1, 1984, through April 30, 1984. Both FATCO and appellee filed briefs on appeal. Appellee argued that the Board lacked jurisdiction to review any discretionary aspect of the decision at issue, but acknowledged that the Board could review legal determinations made in the matter.

After the conclusion of briefing, on November 7, 1985, FATCO filed a motion for oral argument or, in the alternative, evidentiary hearing. Appellee opposed the motion, stating more emphatically than in his brief that the Board lacked jurisdiction to hear the appeal.

The Board has carefully reviewed the administrative record and the parties' filings in this case, and finds that those sources alone are insufficient to permit a determination of either the extent of its jurisdiction or the proper result in this matter. The Board thus finds that an evidentiary hearing before an Administrative Law Judge, in which all issues would be thoroughly investigated, would be beneficial to the ultimate resolution of the appeal. The primary issues sought to be raised by the tribe are factual; the tribe contends, and the Bureau of Indian Affairs denies, that the stumpage prices which are the subject of this appeal have been inflated by the use of erroneous calculations of value. The factfinder must, therefore, take evidence concerning the value of timber and the proper method for establishing stumpage value, since both values and items to be calculated in ascertaining stumpage values are disputed. Thus, actual timber measurement, comparability of other timber sales, and cost items used for calculating stumpage rate must be considered and evaluated by the factfinder. Additionally, the factfinder should take evidence and make a recommendation concerning other issues that are raised by the record and the hearing.

Accordingly, this case is referred to the Hearings Division (Departmental) of this Office for an evidentiary hearing and recommended decision by an Administrative Law Judge (Departmental) to resolve the questions of fact and law involved. The hearing shall be conducted in full compliance with the administrative due process standards generally applicable to other hearings proceedings conducted by Administrative Law Judges (Departmental). The present administrative record may be considered as part of the evidentiary record in the hearing. The recommended decision should address both the extent of the Board's jurisdiction and all of the issues raised.

Pending completion of the hearing and the issuance of the recommended decision, further procedures will be established by the Administrative Law Judge assigned to this case.

Therefore, it is ordered that this case is referred to the Hearings Division (Departmental) for assignment to an Administrative Law Judge (Departmental) who shall conduct a hearing and recommend a decision to the Board. As provided in 43 CFR 4.339, any party may file exceptions or other comments with the Board within 30 days from receipt of the recommended decision. The Board will then inform the parties of any further procedures in the appeal or issue a final decision.

Jerry Muskrat
Administrative Judge

Franklin D. Arness
Alternate Member